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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,058	09/06/2005	Christoph Brabec	21928-017US1	5861
26161	7590	09/29/2008		
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER MOWLA, GOLAM	
			ART UNIT	PAPER NUMBER
			1795	
			NOTIFICATION DATE	DELIVERY MODE
			09/29/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/525,058	Applicant(s) BRABEC ET AL.	
	Examiner GOLAM MOWLA	Art Unit 1795	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-17 and 20-27.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Alexa D. Neckel/  
Supervisory Patent Examiner, Art Unit 1795

/G. M./  
Examiner, Art Unit 1795

Continuation of 11. does NOT place the application in condition for allowance because:

Claim Rejections under 35 U.S.C. § 102(b):

Claims 23 and 27:

In response to Applicant's argument that "even under the Examiner's interpretation of Fujimori, because Fujimori's electrode 3 is between substrate 2 and barrier layer 8, it cannot be correctly be said that barrier layer 8 is supported by substrate 2 while at the same time saying that electrode 3 is supported by barrier layer 8" (see Remarks, page 1), Examiner notes that substrate 2 provides support to the electrode 3 from bottom and the barrier layer 8 provides support to the electrode from above as shown in fig. 2.

Claim Rejections under 35 U.S.C. § 103 (a):

Claims 1-15 and 21-22

In response to Applicant's argument that "as would be readily understood by one skilled in the art, Fujimori discloses only processes in which or making his device in which the semiconductor layer would have the same general degree of structure as the substrate" (see Remarks, page 1), Examiner notes that the object of the Fujimori's invention was to provide a dye-sensitized photoelectric conversion element which comprises a first electrode; a second electrode arranged opposite to the first electrode; an electron transport layer arranged between the first electrode and the second electrode, at least a part of the electron transport layer being formed into porous; a dye layer which is in contact with the electron transport layer; a hole transport layer arranged between the electron transport layer and the second electrode; and short-circuit preventing means for preventing or suppressing short-circuit between the first electrode and the hole transport layer (see [0009-0010]). Applicant seems to rely on fig. 2 to base their arguments. However, fig. 2 is just a cross sectional view of the Fujimori's invention and one reading Fujimori as a whole would have readily appreciated that the substrate or any other layer of the Fujimori's photoelectric conversion device can be structured or planar without departing from the scope of the invention as shown in [0363], i.e., to allow for a dye-sensitized photoelectric conversion element which comprises a first electrode; a second electrode arranged opposite to the first electrode; an electron transport layer arranged between the first electrode and the second electrode, at least a part of the electron transport layer being formed into porous; a dye layer which is in contact with the electron transport layer; a hole transport layer arranged between the electron transport layer and the second electrode; and short-circuit preventing means for preventing or suppressing short-circuit between the first electrode and the hole transport layer (as shown in [0009-0010]).

In response to Applicant's argument that "Tiedje also discloses only processes in which or making his device in which the semiconductor layer would have the same general degree of structure as the substrate" (Remarks, page 1), Examiner notes that only the teaching of structuring the substrate is utilized to make the rejection. Tiedje teaches a photovoltaic device (col. 3, lines 41-43) wherein the substrate (2) is structured (see fig. 2; col. 3, lines 41-43). Tiedje utilizes a structured substrate because such use is conventional in the photovoltaic art as it allows for an increase in the photoconductivity of the semiconductor at long wavelengths (col. 5, lines 11-15). Although in fig. 2 Tiedje shows that the semiconductor layer is structured, Tiedje never stated that the substrate can be structured only when the semiconductor layer is structured. Therefore, one of ordinary skill in the art at the time of the invention would be inclined to use the teachings of Tiedje to increase in the photoconductivity of the semiconductor at long wavelengths.

In response to Applicant's argument "the Examiner should provide evidence regarding how the prior art would have enabled one skilled in the art to modify the processes of Fujimori and/or Tiedje to provide a device having a substrate with structured surface and a semiconductor layer with a planar surface" (Remarks, page 1), Examiner notes that Fujimori discloses a photovoltaic cell as claimed except that the substrate is not structured. One reading Fujimori as a whole would have readily appreciated that the substrate or any other layer of the Fujimori's photoelectric conversion device can be structured or planar. However, Fujimori does not explicitly show that the substrate is structured. Tiedje teaches a photovoltaic device (col. 3, lines 41-43) wherein the substrate (2) is structured (see fig. 2; col. 3, lines 41-43). Tiedje utilizes a structured substrate because such use is conventional in the photovoltaic art as it allows for an increase in the photoconductivity of the semiconductor at long wavelengths (col. 5, lines 11-15). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized the structured substrate of Tiedje in the photovoltaic component of Fujimori, because such use is conventional in the solar or photovoltaic art as it allows for an increase in the photoconductivity of the semiconductor at long wavelengths, as taught by Tiedje.

Claims 23-25 and 27

Applicant argues that "For reasons similar to those noted above, the combination of Fujimori and Tiedje does not render obvious the subject matter covered by claims 23-25 and 27" (see Remarks, page 2).

Examiner notes that the argument is not persuasive as explained above.

Claims 16-17 and 20

Applicant argues that "for reasons similar to those noted above. Fujimori does not disclose or render obvious the subject matter covered by these claims" (see Remarks, pages 2-3).

Examiner notes that the argument is not persuasive as explained above.

Claims 23-26

Applicant argues that "for reasons similar to those noted above. Fujimori does not disclose or render obvious the subject matter covered by these claims" (see Remarks, page 3).

Examiner notes that the argument is not persuasive as explained above.